BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

In the matter of:

RONALD L. FANZO
d/b/a INTERMARC MARKETING
7127 East Becker Lane, Suite 90
Scottsdale, Arizona 85254

RONALD L. FANZO
d/b/a CASHFLOWS
13020 North 96th Place
Scottsdale, Arizona 85260

RONALD L. FANZO
13020 North 96th Place
Scottsdale, Arizona 85260

Respondent.

DOCKET NO. S-003448A-01-0000

POST-HEARING MEMORANDUM BY SECURITIES DIVISION

(Before Hearing Officer Philip J. Dion III)

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby submits the following Post Hearing Memorandum in the above-captioned matter.

I. STANDARD OF PROOF

In administrative adjudication by the Commission, the standard of proof for alleged violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act"), and of the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act"), is merely the preponderance of the evidence. *See Steadman v. S.E.C.*, 450 U.S. 91 (1981) (administrative adjudication of federal securities laws antifraud violations); *see also Geer v. Ordway*, 156 Ariz. 588, 589, 754 P.2d 315, 316 (App. 1987) (administrative adjudication of state motor vehicle operator licensing law).

II. OFFER OR SALE OF UNREGISTERED SECURITIES.

The Division alleged that from about November 2000 or thereafter, respondent Ronald L. Fanzo ("Fanzo"), doing business as Intermarc Marketing ("Intermarc") and/or as Cashflows offered to sell or sold securities within or from Arizona in the form of participation interests in a pool of funds purportedly designed to provide funds from which Fanzo would issue promissory notes, in violation of A.R.S. § 44-1841.

Respondent was duly served on August 3, 2001, with a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("Temporary C&D"). Hearing Exhibit 3. Fanzo responded to the Temporary C&D, and a pre-hearing conference was held September 4, 2001. At that pre-hearing conference, a hearing was scheduled to begin Monday, December 3, 2001, at 10:00 a.m.

Following the pre-hearing conference, Fanzo appeared for an Examination Under Oath. Hearing Exhibit 8. In the course of that examination, held September 26, 2001, Fanzo admitted he had offered and sold participation interests in a pool of funds designed to be used to purchase computer systems for sale to sub-prime borrowers who wished to set up a home-based Internet business. *See id.* at 16-17. He also acknowledged the investors were completely passive. *Id.* at 31-32.

A. Securities: Investment Contracts.

The Securities Act includes "investment contract" under its definition of a "security." A.R.S. § 44-1801(26). To define this particular category of security, our Court of Appeals has recognized a modified federal "*Howey* test" requiring (1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits, (4) to be derived substantially from the efforts of others. *See Nutek Info. Sys, Inc. v. Arizona Corp. Comm'n,* 194 Ariz. 104, 108, 977 P.2d 826, 830 (App. 1998), *cert. denied,* 120 S. Ct. 332 (1999); *Vairo v. Clayden,* 153 Ariz. 13, 17, 734 P.2d 110, 114 (App. 1987); *Sullivan v. Metro Productions, Inc.*, 150 Ariz. 573, 576-77, 724 P. 2d 1242, 1245-46 (App. 1986), *cert. denied,* 470 U.S. 1102 (1987). This is an objective standard to characterize an

offering or transaction when it is made. What actually occurred or could have occurred afterward is immaterial to its application. *See Daggett v. Jackie Fine Arts, Inc.*, 152 Ariz. 559, 565, 733 P.2d 1142, 1148 (App. 1986). The ***representations*** made by the promoters, not their actual conduct, determine whether an interest is an investment contract. *S.E.C. v. Lauer,* 52 F.3d 667, 670 (7th Cir. 1995). A writing is not required--investment contracts can be oral agreements. *S.E.C. v. Addison*, 194 F. Supp. 709, 722 (N. D. Tex. 1961).

The Intermarc investment program interests satisfy all elements of the applicable standard. To satisfy the first prong, an investor gives "a specific consideration in return for a separable financial interest with the characteristics of a security." *International Brotherhood of Teamsters v. Daniel*, 439 U.S. 551, 559 (1979). This requires "only that the investor must commit his assets to the enterprise in such a manner as to subject himself to financial loss." *Hector v. Wiens*, 533 F.2d 429, 432 (9th Cir. 1976); *accord, Ontario, Inc. v. Mays*, 780 P.2d 1127-28 (Kan. App. 1989) (applying *Hector* definition to Kansas Securities Act); *Activator Supply Co. v. Wurth*, 722 P.2d 1081, 1087 (Kan. 1986) (same). This prong is clearly satisfied by the transfer of investor funds into the sole control of Fanzo. *See, e.g.,* Hearing Exhibits 7, 7A, 8.

A common enterprise requires the fortunes of the investor to be interwoven with and dependent upon the efforts and success of those seeking the investment of third parties. *Vairo*, 153 Ariz. at 17, 734 P.2d at 114; *Sullivan*, 150 Ariz. at 576, 724 P.2d at 1245. This element is satisfied by either the vertical or horizontal tests. *Vairo*, 153 Ariz. at 17, 732 P.2d at 114; *Daggett*, 152 Ariz. at 565, 733 P.2d at 1148. Both tests are satisfied here, although the Division must establish only one.

The horizontal test requires the pooling of investor funds to be collectively managed by the promoter or a third party. *Vairo, id.* at 17, P.2d at 114; *Daggett*, 152 Ariz. at 565, 733 P.2d at 1148. This can include a pooling of interests, usually combined with a pro-rata sharing of profits. *Brodt v. Bache & Co., Inc.*, 595 F.2d 459, 460 (9th Cir. 1978). In this case, Fanzo admitted funds had been pooled under his management. Hearing Exhibit 8 at 31-32. The investor agreements make clear the funds were pooled under Fanzo's management. *See* Hearing Exhibits 7, 7A, Post-Hearing Exhibits

11, 12.

The vertical test requires a positive correlation between investor success and the success of the promoter, *Vairo*, *id*; *Daggett*; *id*; or the seller or some third party. *S.E.C. v. R. G. Reynolds Enterprises, Inc.,* 952 F.2d 1125, 1130 (9th Cir. 1991); *Hocking v. Dubois*, 885 F.2d 1449, 1455 (9th Cir. 1989). In this case, it is clear that unless Fanzo's business was successful, there would be no ability to repay the investors. *See, e.g.,* Hearing Exhibit 8 at 18-22.

The expectation of profits element requires the investor to be attracted by the prospects of a return on the investment, whether from income yielded by the investment or from capital appreciation. *See United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 852 (1975). This element is satisfied by Fanzo's promise of a 30% return on investment. *See, e.g.,* Hearing Exhibits 4, 7A.

The last element requires that the efforts made by those other than the investor be the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise. *Nutek*, 194 Ariz. at 108, 977 P.2d at 830; *Sullivan*, 150 Ariz. at 577, 724 P.2d at 1246. Such efforts need not be by the promoter. *Vairo*, 153 Ariz. at 17, 734 P.2d at 114; *Daggett*, 152 Ariz. at 566, 733 P.2d at 1149. Nor must they preclude the investor from some powers of control. *Rose v. Dobras*, 128 Ariz. 209, 212, 624 P.2d 887, 890 (App. 1981). In this case, however, it is clear that the sole control over the enterprise was exercised by Fanzo. He confirmed that in his Examination Under Oath. Hearing Exhibit 8 at 31-32. Investor witness Scott Brown likewise confirmed that he had no control over any aspect of Fanzo's business. Reporter's Transcript of Proceedings, December 3, 2001 (No. SEC 1090, filed Dec. 21, 2001) at 86-87 (hereafter, *e.g.*, "H.T. at 86-87.")

The evidence cited above to prove the elements of the *Howey* standard was not contested at the hearing or before the hearing. The Intermarc investment programs were investment contracts within the meaning of the Securities Act.

. . .

B. Securities: Certificates of Participation in a Profit-Sharing Agreement.

The definition of a "security" in the Securities Act includes "any ...certificate of interest or participation in any profit-sharing agreement." A.R.S. § 44-1801(26). No Arizona case law has interpreted this statutory language. Identical categories in the definition of security in the federal Securities Act of 1933 ("1933 Act") and the Securities Exchange Act of 1934 ("1934 Act"), however, have been scrutinized by the federal courts. The Supreme Court opined that "withdrawable capital shares" of an Illinois savings association fell within this category in the 1934 Act because they were evidenced by a certificate and dividends were paid from apportioned profits. *Tcherepnin v. Knight*, 389 U.S. 332, 339, 88 S.Ct. 548, 555 (1967). "Instruments may be included within any of [the Act's] definitions, as matter of law, if *on their face* they answer to the name or description." *Tcherepnin*, 389 U.S. at 339, 88 S.Ct. at 555 (emphasis added); *see also S.E.C. v. Addison*, 194 F. Supp. 709 (N. D. Tex. 1961) (written agreement to execute contract conveying percentage interest in income and profits from mining operations); *Diaz Vicente v. Obenauer*, 736 F.Supp. 679 (E. D. Va. 1990) (participation agreement for *pro rata* distribution of profits from real estate development).

The fact that respondent's programs qualify as investment contracts clearly establishes the profit-sharing element for a certificate of interest or participation in a profit-sharing agreement. The "certificate" requirement for a writing memorializing the investment agreement is satisfied by the Security Agreements provided by Fanzo to his investors. *See, e.g.*, Hearing Exhibit 7A. These writings provided to investors were securities in the form of certificates of interest or participation in a profit sharing agreement within the meaning of the Securities Act.

C. Securities: Notes.

The definition of "security" in the Securities Act includes "any note." A.R.S. § 44-1801(26). For purposes of A.R.S. §§ 44-1841 and 44-1842, no judicial gloss further defines "note" by any standard or test. *See State v. Tober*, 173 Ariz. 211, 213, 841 P.2d 206, 208 (1992); *MacCollum v. Perkinson*, 185 Ariz. 179, 185, 913 P.2d 1097, 1103 (App. 1996). Those

registration statutes are violated by the offer or sale of any note that is neither registered nor specifically exempt from registration under the Securities Act. *Tober*, 173 Ariz. at 213, 841 P.2d at 208; *MacCollum*, 185 Ariz. at 185, 913 P.2d at 1103. Evidence admitted at the hearing in this matter showed Fanzo sold notes by promising a specific rate of return on an investment amount within a particular period of time. *See* Hearing Exhibit 7A.

D. Non-Registration of the Securities.

It is uncontested that these securities were never registered as required by the Securities Act. A certificate of non-registration was admitted into evidence pursuant to A.R.S. § 44-2034. Hearing Exhibit 2.

It is unlawful to offer or sell within or from Arizona any securities not registered or not exempt therefrom under the Securities Act. A.R.S. § 44-1841; *see generally State v. Burrow*, 133 Ariz. App. 130, 132, 474 P.2d 849, 851 (1970). The burden of proving the existence of any exemption from registration under the Securities Act is on the party raising such a defense in a civil action. *State v. Barber*, 133 Ariz. 572, 578, 653 P.2d 29, 35 (App. 1982), *approved*, 133 Ariz. 549, 653 P.2d 6 (1982). Fanzo never raised any affirmative defense of exemption or preemption from the requirement of registration under the Securities Act.

E. Respondent as Offeror and Seller.

The Securities Act defines an "offer to sell" or "offer for sale" as follows:

> "Offer to sell" or "offer for sale" means an attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value or any sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer. . . .

A.R.S. § 44-1801(15).

The evidence at the hearing clearly established that Fanzo solicited investments through his website (Hearing Exhibit 4), and through other publicly available means. Investor-witness Scott Brown testified he had responded to a message on an Internet "bulletin board," and Fanzo responded to his inquiry regarding the investment described on the bulletin board message. H.T. at 62. Fanzo

confirmed he had posted materials on the Internet soliciting participation in his investment pool. Hearing Exhibit 8 at 38-39. Fanzo thus offered investments within the meaning of A.R.S. § 44-1801(15).

The Securities Act also defines "sale" of a security, or to "sell" a security:

> "Sale" or "sell" means a sale or any other disposition of a security or interest in a security for value, and includes a contract to make such sale or disposition. A security given or delivered with, or as a bonus on account of, a purchase of securities or other thing shall be conclusively presumed to constitute a part of the subject of the purchase and to have been sold for value.

A.R.S. § 44-1801(21).

Fanzo obtained value for the interests he conveyed to his investors. He directly collected more than $15,000.00 from his victims, through payments made directly to Fanzo. He therefore qualifies as a seller of securities.

A certification that the securities offered and sold by Fanzo were not registered was admitted into evidence at the hearing. Hearing Exhibit 1. The above discussion makes clear that Fanzo did offer or sell securities that were not properly registered. Fanzo therefore is liable for violating A.R.S. § 44-1841.

III. TRANSACTIONS BY UNREGISTERED DEALERS OR SALESPERSONS.

The Division alleged that Fanzo violated A.R.S. § 44-1842 by acting as a securities dealer or salesperson while unregistered under the Securities Act. Fanzo did not contest his non-registration. The Division admitted into evidence a certificate of non-registration against him pursuant to A.R.S. § 44-2034. Hearing Exhibit 2. Fanzo thus is liable for violation of A.R.S. § 44-1842.

IV. FRAUD IN CONNECTION WITH THE OFFER OR SALE OF SECURITIES.

The Division alleged that in connection with their offer or sale of securities, Fanzo violated A.R.S. § 44-1991 by making untrue statements and misleading omissions of material fact. The Division further alleged that he also violated this antifraud statute by engaging in

transactions, practices or courses of business which operated or would operate as a fraud or deceit. ***Any one*** of these acts is sufficient to establish securities fraud. *Hernandez v. Superior Ct.*, 179 Ariz. 515, 880 P.2d 735 (App. 1994).

A. Untrue Statements and Misleading Omissions of Material Fact.

A. R. S. § 1991(A)(2) makes it unlawful for any person:

- in connection with a transaction or transactions
- within or from Arizona
- involving an offer to sell or buy securities, or a sale or purchase of securities
- directly or indirectly
- to make any untrue statement of material fact
- or to omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

Materiality is shown by a substantial likelihood that, under all the circumstances, the misstated or omitted fact "would have assumed actual significance in the deliberations" of a reasonable buyer. *Trimble v. American Sav. Life Ins. Co.*, 152 Ariz. 548, 553, 733 P.2d 1131, 1136 (1986), citing *Rose v. Dobras*, 128 Ariz. 209, 214, 624 P.2d 887, 892 (App. 1981), *quoting TSC Indus. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). Under this objective test, an omission or misstatement need not have been actually significant to a particular buyer.

The affirmative duty not to mislead potential investors in any way places a heavy burden on the offeror and removes the burden of investigation from the investor, who is not required to act with due diligence. *Trimble*, 152 Ariz. at 553, 733 P.2d at 1136. A misrepresentation or omission of a material fact in the offer and sale of a security is actionable even though it may be unintended or the falsity or misleading character of the statement may be unknown. *Scienter* or guilty knowledge is not an element of a civil violation of A.R.S. § 44-1991(A)(2). *State v. Gunnison*, 127 Ariz. 110, 113, 618 P.2d 604, 607 (1980).[1] A seller of securities is strictly liable

[1] In so interpreting A.R.S. § 44-1991(A)(2), the Arizona Supreme Court identified § 17(a) of the federal Securities Act of 1933 ("1933 Act") as the counterpart of A.R.S. § 44-1991, then followed the federal interpretation

for his misrepresentations or omissions. *Rose v. Dobras*, 128 Ariz. at 214, 624 P.2d at 892.

Further, if the omissions or nondisclosures meet the standards of materiality to a reasonable investor, causation and reliance can be assumed. *Trimble*, 152 Ariz. at 553, 733 P.2d at 1136, quoting *Harmsen v. Smith*, 693 F.2d 932, 946 (9th Cir. 1982). Additionally, there is no requirement to show that investors relied on the misrepresentations or omissions, *Rose*, 128 Ariz. at 214, 624 P.2d at 892, or that the misrepresentations or omissions caused injury to the investors, *Trimble*, 152 Ariz. at 553, 733 P.2d at 1136.

The Division presented evidence of the following specific acts by which Fanzo violated A. R. S. § 1991(2) with untrue statements and misleading omissions of material fact.

1. Untrue statements regarding sales of computer systems.

The allegation was uncontested at the hearing that Fanzo never sold a computer system. Indeed, Fanzo himself testified he had not sold any computer systems. Hearing Exhibit 8 at 17, 19, 40. Nevertheless, Fanzo represented to investor Scott Brown that his company had net accounts receivable of more than $161,000. Hearing Exhibit 7 at Doc. ACC00052. He also indicated that he had had some contracts "slip into delinquency status" but had had no defaults. Hearing Exhibit 7 at Doc. ACC00057. Both these representations clearly were designed to give the false impression that Fanzo had sold a significant number of computer systems, when in fact he had not sold a single system.

2. Untrue statement of protection for investor funds.

Fanzo's Cashflows website stated the notes for which he solicited investor participation were "purchased with full recourse ... which means the seller of the note has an obligation to buy the note back or provide compensation in the event of a loss." Hearing Exhibit 4, ACC00029.

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of §17(a)(2) in *Aaron v. S.E.C.*, 446 U.S. 680 (1980). *Gunnison*, 127 Ariz. at 112-113, 618 P.2d at 606-607. Our supreme court declared that although it was "not bound by the interpretation placed by the United States Supreme Court on the federal statute, it is helpful, for consistency in the application of the law, to be harmonious with the United States Supreme Court. Unless there is a good reason for deviating from the United States Supreme Court's interpretation, we will follow the reasoning of that court in interpreting sections of our statutes which are identical or similar to federal securities statutes." *Id.*

That website also stated the "value of the notes purchased is always more than 3 times the amount invested to acquire the notes." *Id.*

In fact, since Fanzo never sold a computer system, there were no notes backing the investments. As a result, investors' funds were not protected, and Fanzo's statements to the contrary were false and misleading.

3. Untrue statement of use of investor funds.

Fanzo represented to investor Scott Brown that investor funds were to be utilized for only two purposes—marketing and equipment purchases. Hearing Exhibit 7, ACC00039, pp. 1, 2. In fact, however, Fanzo utilized investor funds to pay his personal living expenses. Hearing Exhibit 8 at 22. Fanzo never sold a computer system (Hearing Exhibit 8 at 17, 19, 40) and therefore did not utilize investor funds for equipment purchases. His representation regarding the use of investor funds only for advertising and equipment purchases therefore was false and misleading.

4. Misleading omission of personal use of investor funds.

Fanzo failed to disclose his misuse of investor funds for personal expenditures. Investor witness Scott Brown testified he was never informed when he invested that funds would be used for anything other than placement into the Intermarc program. H.T. at 76. He was not told his funds could be used for personal expenses. *Id.* Fanzo's e-mail messages to Brown disclosed that funds would be used for two purposes—marketing and equipment purchases. Hearing Exhibit 7, ACC00039, pp. 1, 2. Fanzo acknowledged he had used investor funds to pay his personal living expenses. Hearing Exhibit 8 at 22. His omission to disclose that fact to investors or potential investors was misleading and violates the Securities Act.

5. Misleading omission of business experience and background information.

Fanzo failed to disclose his business experience and background to potential investors. Failure to disclose the business history of a securities issuer and the business backgrounds and experience in investments of its principals is a misleading omission of material fact. *State ex rel.*

Corbin v. Goodrich, 151 Ariz. 118, 126-127, 726 P.2d 215, 223-224 (App. 1986). Investors had no due diligence burden of investigation to ask for this information. *See Trimble,* 152 Ariz. at 553, 733 P.2d at 1136. None of the documents received by investors accurately disclosed Fanzo's business experience or background. *See, e.g.*, Hearing Exhibits 4, 5, 7; *see also* Hearing Exhibit 8 at 9-11 (background primarily in art and design), 32 (information provided to investors consisted of Internet information and sample agreement).

Fanzo's failure to disclose his business experience and background to investors and potential investors was misleading. As a result, Fanzo violated the Securities Act by failing to disclose this information.

6. Misleading omission of accurate financial information.

Fanzo also failed to disclose financial statements accurately reflecting the financial condition of Intermarc and/or Cashflows. Failure to disclose the financial condition of a securities issuer is a misleading omission of material fact. *Goodrich, 151 Ariz. at 126-127, 726 P.2d at 223-224.* Investors had no due diligence burden of investigation to ask for this information. *See Trimble, 152 Ariz. at 553, 733 P.2d at 1136.* No financial information is found in any of the Intermarc documents admitted into evidence at the hearing. The only financial information provided by Fanzo is reflected in the Scott Brown e-mail messages introduced at the hearing. Hearing Exhibit 7. Based upon Fanzo's testimony in his Examination Under Oath, that information is incorrect and misleading. *See* Hearing Exhibit 8 at 17, 19, 40 (no computer systems ever sold).

B. <u>Fraudulent Transactions, Practices, or Courses of Business</u>.

The Division alleged that in connection with their offers or sales of securities, Fanzo directly or indirectly engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors within the meaning of A.R.S. § 44-1991(A)(3), including misusing investor proceeds for personal and other unauthorized uses.

The elements of securities fraud under A.R.S. § 44-1991(A)(3) make unlawful:

- in connection with a transaction or transactions
- within or from Arizona
- involving an offer to sell or buy securities, or their sale or purchase
- directly or indirectly
- to engage in
- any transaction, practice or course of business
- that operates or would operate as a fraud or deceit.

This subsection is similar to that found at § 17(a)(3) the federal Securities Act of 1933 ("1933 Act"). *See State v. Superior Ct.*, 123 Ariz. 324, 331, 599 P.2d 777, 784 (1979),[2] *overruled in part on other grounds, Gunnison*, 127 Ariz. at 113, 618 P.2d at 607; *State v. Barber*, 133 Ariz. 572, 575 n.1, 653 P.2d 29, 32 n.1 (App. 1982), *aff'd*, 133 Ariz. 549, 653 P.2d 6 (1982); *Greenfield v. Cheek*, 122 Ariz. 70, 73, 593 P.2d 293, 296 (App. 1978), *aff'd*, 122 Ariz. 87, 593 P.2d 280 (1979), *overruled in part on other grounds, Gunnison,* 127 Ariz. at 113, 618 P.2d at 607; *Baker v. Walston & Co.*, 7 Ariz. App. 590, 593, 442 P.2d 148, 151 (1968). Under the Arizona Supreme Court's determination to follow the United States Supreme Court's interpretation of our statute's federal counterpart,[3] *scienter* is not an element of a violation of this subsection.[4] *See Aaron v. S.E.C.*, 446 U.S. 680, 696, 100 S.Ct. 1945, 1956, 64 L.Ed.2d 611 (1980).

1. Misuse of investor proceeds for personal uses.

By misusing investor proceeds for unauthorized personal uses, Fanzo engaged in

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[2] The Arizona Supreme Court opined: "The provisions of A.R.S. § 44-1991 are almost identical to the antifraud provisions of the 1933 Securities Act, 15 U.S.C. § 77q (1970)." *State v. Superior Court*, 123 Ariz. at 331, 599 P.2d at 784.

[3] *Gunnison*, 127 Ariz. at 112-113, 618 P.2d at 606-607.

[4] The Idaho Securities Act antifraud provision at I.C. § 30-1403 (1967) provides in relevant part: "It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly ... (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person." Noting that § 17(a)(3) the federal 1933 Act is "virtually identical" to this provision, the Idaho Supreme Court held that scienter is not an element of securities fraud under this state act subsection, citing *Aaron v. S.E.C.*, 446 U.S. 680 (1980) for authority. *See State v. Shama Resources Ltd. Partnership*, 899 P.2d 977, 982 (Idaho 1995).

transactions, practices or courses of business which operated or would operate as a fraud or deceit on offerees and investors. The previous discussion established the evidence for the misleading omission of material disclosure of such uses. This omission is alternatively alleged here as a fraudulent practice or course of business by Fanzo.

2. False and misleading statements in connection with offer and sale of securities.

By making false and misleading statements in connection with the offer or sale of the securities in issue, Fanzo also engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit on offerees and investors. The previous discussion established the evidence for these false and misleading statements. These statements are alternatively alleged here as a fraudulent practice or course of business by Fanzo.

IV. RELIEF REQUESTED

In light of the foregoing, the Division requests that the Commission grant the following relief against Fanzo:

A. Cease and Desist Order.

Pursuant to A.R.S. § 44-2032, Fanzo should be ordered to permanently cease and desist from violating A.R.S. §§ 44-1841, 44-1842 and 44-1991 of the Securities Act.

B. Order of Restitution.

Pursuant to A.R.S. § 44-2032(1) and A.A.C. R14-4-308(C)(1), Fanzo should be ordered to pay monetary restitution as follows:

Under the Securities Act, Fanzo should pay the total amount of $8,250.00 in restitution to those investors who suffered losses as shown on Post-Hearing Exhibit 9A, together with interest pursuant to A.A.C. R14-4-308 from the dates of investment at the statutory rate of ten percent per annum.

C. Administrative Penalties.

Pursuant to A.R.S. § 44-2036(A), Fanzo can be assessed administrative penalties in an

amount not to exceed five thousand dollars for each Securities Act violation. From the foregoing review of evidence, it is clear that Fanzo violated the antifraud and both registration provisions of the Securities Act with each sale of a security for which the Division is seeking restitution. The Division has alleged at least six acts that each constituted a separate violation of the Securities Act antifraud provision in connection with each sale of a security. Fanzo therefore is subject to cumulative penalties for multiple violations.

Fanzo committed numerous and significant violations of the Securities Act. He should be assessed administrative penalties in an amount not less than $10,000.

D. Other Relief.

The Division further requests any other relief that the Commission in its discretion deems appropriate and authorized by law.

RESPECTFULLY submitted this 3rd day of January, 2002.

JANET NAPOLITANO
Arizona Attorney General

By _____
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Copy of the foregoing
mailed this 3rd day of
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